



The WB National University of Juridical Sciences

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STUDENT JURIDICAL ASSOCIATION

28th November, 2018

Shri Keshari Nath Tripathi,

His Excellency the Governor of West Bengal

Sub: Concerns Regarding the West Bengal National University of Juridical Sciences (Amendment) Bill, 2018

Respected Sir,

The West Bengal National University of Juridical Sciences, Kolkata (‘NUJS’) was established by the WBNUJS Act, 1999 enacted by the West Bengal State Legislature. As the statute’s Preamble states, the institution was envisioned as a “national level institution of excellence in higher learning of law.” In a span of eighteen years, NUJS has carved an outstanding academic reputation for itself as one of the most sought after law schools in India, measured by the preferences of applicants writing the Common Law Admission Test (CLAT) in which NUJS currently is the institution of third preference (after NLSIU Bangalore and NALSAR, Hyderabad) amongst 20 national law schools whose admission is administered through the CLAT since 2008. This identity of NUJS – as an autonomous, national level institution of legal excellence stands in doubt with the passing of the West Bengal National University of Juridical Sciences (Amendment) Bill, 2018 (‘the Bill’).

THE PROPOSED AMENDMENTS AND THEIR UNPLANNED IMPLICATIONS

The Bill introduces amendments which seek to change the character of NUJS as an institution of excellence which has contributed to nation building. These amendments are not only vague and contrary to constitutional principles but also detrimentally affect the institution.

A. Separate Entrance Examination and CLAT [Clause 4B (1) and Clause 4 B(2)]

This provision provides that admission to the University shall be on the basis of “*qualifying examination or ... relevant entrance examination conducted by the University or by Common Entrance Test conducted at the State or National Level.*” This **vague provision** violates the mandate of Article 14 of the Constitution of India in so far as it ambiguously allows the University/State to provide for two

distinct examinations for entrance to NUJS at the same time. Such a provision also goes against the decision of the Hon'ble Supreme Court in *Pradip Jain v. Union of India* (1998 12 SCC 12) which mandates that an institution cannot have a separate common entrance test for the same batch of students.

This provision also allows the University/State to exit the CLAT framework of admission. The CLAT framework of providing a national common entrance test was the result of the decision of the Hon'ble Supreme Court in *Varun Bhagat v. Union of India* [WP. (C) No. 68 of 2006]. This was further reaffirmed by the Supreme Court in the on-going petition *Shamnad Basbeer v. Union of India* while examining the question whether National Law Schools can prescribe regional reservations and whether they are to be considered as Institutes of National Importance. If enacted, this provision goes against the decisions of the Supreme Court and also is an invitation for arbitrary admissions in NUJS which is anathema to the concept of merit that should govern educational institutions.

B. Domicile Reservation in a National Institution [Clause 4A (3)(b)]

This Bill reserves “at least thirty percent of the total intake” for students “domiciled in the State of West Bengal.” This provision is equally vague as the bill does not define ‘domicile’ unlike similar legislations in others states which do so by specifying the duration of residence.

Such a provision would lead to reduction of opportunity for students from general and reserved category students from all the States except West Bengal. In this regard, the decision of the Supreme Court in *A.I.I.M.S Student Union v. A.I.I.M.S and Ors.* [(2002) 1 SCC 428] and *Saurabh Chaudhari and Ors. v. Union of India* [(2003) 11 SCC 146] state that domicile reservation for students of one state must be kept at a minimal in a national institution which has been envisaged to serve the country as a whole. In such cases, merit of the candidates must be the sole guiding principle.

Furthermore, while the Bill justifies this provision in its statement of object and reasons by stating that ‘it is to bring in consonance’ with other national law schools which have domicile reservation. However, it fails to take into account that unlike other national law universities, such as the neighbouring NLU-Odisha which recently received a grant of more than INR 300 crores from the Government of Odisha, the contribution of the West Bengal government to the institution has been minimal and dispensable.

Moreover, in the words of its founder Prof. Madhav Menon, NUJS was founded by the then government with the Chief Justice of India as its Chancellor giving it a national character and institutional autonomy unprecedented in higher education in West Bengal. The introduction of similar reservation through an amendment in National Law School of India University (NLSIU)

Bangalore, which is the only other NLU with such an administrative structure, raised multiple technical questions causing His Excellency the Governor of Karnataka to return the bill for re-consideration.

C. Compromising Financial Autonomy [Clause 4A (1) and Clause 4A (2)]

Currently, NUJS is a self-financing autonomous institution run on student fees. Since its inception, NUJS embarked on a model of self-sustainability through a combination of revenue generation from student fees, philanthropic grants and project consultancies. Later, to cope up with increased salaries of the faculty and administrative staff who unlike their counterparts in other state universities are paid at central government pay-scales, NUJS was forced to expand its batch-size without concomitant expansion in faculty, student housing and infrastructure.

The bill via clause 4A grants the state the power to fix the fees for the students. It also grants ‘free-ships’ to at least 5% students belonging to poor and economically backward classes. **However, it also states that it shall have no financial implications on the state.**

Consequently, while regulation of student fees and tuition waivers are a laudable objective, the bill does not address the financial implications arising out of the same. According to the report of the University review commission constituted by the chancellor, Hon’ble Chief Justice of India, student fees currently contribute to 153% of the University’s expenditures (page 42). The report also recommends that “NUJS establish an expert committee to propose a financial plan for NUJS for the next decade consonant with its vision and mission.”

Without taking into account these considerations, a hasty decision to regulate student fees in the absence of sufficient state funding to compensate for it, would practically make it unfeasible for the University to operate at its expenditure standards. It will consequently lead to the University determining its expenditure based on the state government’s prerogative. For instance, one of the major expenses of the University – the staff of faculty and administrative staff – will need to be in accordance with the state government’s pay-scale. Currently, the West Bengal government continues to pay its employees as per the 5th pay commission. The University, on the other hand, is on the verge of implementing the 7th pay commission of the Central Government. Consequently, any decrease or freeze on increment will lead to faculty attrition. This will be aggravated by the fact that the other national law universities including the recently established Himachal Pradesh National Law University pay their faculty at a much higher-scale.

D. Non-consultation with Stakeholders

At this point, the University has been yearning for administrative stability and dynamic leadership. Since April 2018, the University has been functioning under an acting vice-chancellor. There have been no permanent registrar or accounts officer appointed to the University for the past 3 years. The post of the finance officer has been vacant since the inception of the University. In lack of a permanent administration, the University affairs are in a dire state and its functioning and growth have been temporarily halted and paralyzed. **In spite of such state of affairs, the bill was introduced without any consultation with its stakeholders - the Chancellor of the University (Hon'ble Chief justice of India), its Governing Bodies, its faculty and administration.**

The Minister-in-Charge for the Law Department and the Judicial Secretary who have drafted and proposed the bill are members of the University's Executive Council. However, no discussion or consultation on the proposed bill was initiated by them in the last executive council meeting on 29th September, 2018 attended by them comprising of the Vice-Chancellor (Chairperson), Registrar (Secretary), University Treasurer, Justice Arun Mishra (Nominee of the Chief Justice Of India), the Chief Justice of the Calcutta High Court, the Advocate General of West Bengal, Addl. Chief Secretary to the Higher-Education Department, Vice-Chancellor of National Law School of India University (NLSIU) Bangalore, Director Of IIM-Calcutta and Members of the Faculty among others. **In the absence of any consultation and no clear plan of action to tackle the possible ramifications of the bill, the bill could jeopardize the growth, development and excellence that the University has managed to achieve in eighteen years of its existence.**

Therefore, the provisions of the bill are vague, pose technical problems and raise concerns about their constitutional validity. This Bill also threatens the institutional autonomy and national character of the institution and if implemented without adequate consultation, will lead NUJS into a state of permanent paralysis. In light of these considerations, we humbly pray that Your Excellency kindly require the Bill to be reconsidered.

Yours sincerely,

(On behalf of the entire student body of NUJS)

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